

MASSACHUSETTS
Public Employee Retirement Administration Commission
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MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Regular Compensation and Motor Vehicle Usage

DATE: October 17, 2001

This memorandum is intended to amplify on matters raised in PERAC Memos #3/2001 and #25/2001 and to advise Retirement Boards with respect to the actions required.

Personal use of employer-owned or leased motor vehicles for which W-2 forms are issued:

Some members of Retirement Systems are allowed personal use of employer-owned or leased motor vehicles. For some members, the value of this personal use is treated as compensation and is reported as income to the IRS on the employee's W-2 tax form. As noted in PERAC Memo #3/2001, the amount of this income is to be considered as regular compensation for retirement purposes. Consequently, any amount included in the member's W-2, consistent with the IRS rules, that reflects the value of personal use of a motor vehicle is to be considered regular compensation and would be subject to retirement contributions.

Personal use of employer-owned or leased motor vehicles for which W-2 forms are not issued:

Some members of Retirement Systems are allowed personal use of employer-owned or leased motor vehicles, the use of which is totally or partially exempt from federal taxation. These members may not have W-2 forms to support the determination of the value of the personal use. The fact that the value is not subject to federal taxation is not determinative when deciding whether it is regular compensation. Neither the Retirement Board nor PERAC makes the determination as to whether certain items are subject to federal income taxation. These determinations are made by the employer, in a manner consistent with the relevant federal laws and regulations.

The relevant federal regulation [§ 1.274-5T(k)] contains a specific listing of the vehicles that might be considered to be exempt from federal taxation. These are vehicles that, by reason of their nature (for example the vehicle's design), are not likely to be used to a great extent for

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personal purposes. The list includes, but is not limited to, cement mixers, forklifts, school buses, dump trucks, and cranes and derricks. Clearly marked police and fire vehicles are also included on the list. The discussion that follows relates only to clearly marked police and fire vehicles and unmarked law enforcement vehicles. If members of your system are allowed personal use of other employer-owned or leased vehicles for which a W-2 is not issued, please contact our office so we can discuss these on an individual basis.

A "clearly marked police or fire vehicle" is defined in IRS Regulation § 1.274-5T(k)(3) as an employer-owned or leased vehicle that a police officer or firefighter is required to use for commuting because he or she is on call at all times when not on a regular shift. Any personal use of the vehicle (other than commuting) outside the limit of the police officer's arrest powers or the firefighter's obligation to respond must be prohibited by the employer. A police or fire vehicle is "clearly marked" if there is a written or painted insignia that makes it readily apparent that the vehicle is a police or fire vehicle. An official license plate, by itself, is not considered to be a clear marking.

An unmarked law enforcement vehicle could also be considered to be tax exempt, and thus no W-2 would be issued, if the governmental unit that owns or leases the vehicle has authorized its use by a law enforcement officer incident to his or her law enforcement functions. The regulation [§ 1.274-5T(k)(6)] specifically provides that the use of an unmarked vehicle for vacation or recreation trips cannot be an authorized use.

The personal use of a marked or unmarked police vehicle must be specifically authorized by the employer. Any personal use that is not authorized could be considered to be income and the employer would issue a W-2 form.

Inclusion of personal use of an employer-owned or leased motor vehicle as regular compensation:

The regular compensation of any member who is authorized to use an employer-owned or leased motor vehicle for personal use shall include the value of that personal use.

For members who receive a W-2 form in connection with personal use, the amount of regular compensation will be the amount reflected in the W-2 issued by the employer. If the motor vehicle is used only for commuting, the value will likely be \$1.50 each way for 249 days per year. If the employee is allowed personal use in addition to use for commuting, the value will have been added to the W-2 issued by the employer.

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Members who do not receive a W-2 form in connection with personal use of an employer-owned or leased motor vehicle will most often be a police officer or firefighter. The member must provide evidence that he or she is authorized to use the employer-owned or leased motor vehicle for personal purposes and the extent to which such personal use is authorized. As with the personal use described above, the value of the use of the motor vehicle for commuting will be \$1.50 each way for 249 days per year. In addition, the member must establish the annual leased value of the vehicle and the percentage of the total use that was for personal purposes. The attached Annual Lease Value Table and Worksheet may be of assistance in this regard.

As noted above, neither PERAC nor the Retirement Board is responsible for determining the status of personal use of a motor vehicle for federal income taxation purposes. This determination is to be made by the member's employer.

Actions that Retirement Boards must take:

The Retirement Board must take all steps needed to identify all members, active and retired, who have been authorized to use an employer-owned or leased motor vehicle for personal purposes. The employers in the governmental units that make up the Retirement System would most likely be able to identify these members. Each active member must establish the value of the personal use of the employer-owned or leased motor vehicle and must pay contributions into the Retirement System for the value of all such personal use. Retirees should also be identified and given the opportunity to make any required make-up payments. Upon payment, the retirement allowance of any retiree will be calculated.

Any active member who was authorized to use an employer-owned or leased motor vehicle for personal purposes must make contributions for the value of this use for the entire time that such use was authorized. Members will not be required to pay interest on lump sum make-up payments. If the Board allows the make-up payment to be made in installments, interest would accrue. Make-up payments cannot be waived.

Going forward, each member who is authorized to use an employer-owned or leased motor vehicle for personal purposes will be required to make contributions with respect to the value of this personal use. These payments may be made periodically in a manner determined by the Board or can be withheld from the member's regular compensation.